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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,126	07/09/2004	Stephen Ray Foor	BA9297USPCT	5564

7590 04/17/2007
David E Heiser
E I du Pont de Nemours & Company
Legal Patents
Wilmington, DE 19898

EXAMINER

SASAN, ARADHANA

ART UNIT	PAPER NUMBER
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1609

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
31 DAYS	04/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/501,126

Applicant(s)

FOOR ET AL.

Examiner

Aradhana Sasan

Art Unit

1609

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-16 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1, 2, 6-11 (all partially), drawn to a composition for controlling plant diseases caused by fungal plant pathogens comprising (a) at least one compound of formula I of claim 1, N-oxides and agriculturally suitable salts thereof and (b) an alkylenebis(dithiocarbamate) fungicide, and a method for controlling plant diseases caused by said pathogens comprising applying said composition to the plant or portion thereof, or to the plant seed or seedling.

Group II, claim(s) 1, 2, 6-11 (all partially), 4, 5 (all complete), drawn to as in group I, but component (b) is a compound acting at the bc₁ complex of the fungal mitochondrial respiratory electron transfer site.

Group III, claim(s) 1, 2, 6-11 (all partially), 3 (all complete), drawn to as in group I, but component (b) is cymoxanil.

Group IV, claim(s) 1, 2, 6, 9-11 (all partially), drawn to as in group I, but component (b) is a compound acting at the demethylase enzyme of the sterol biosynthesis pathway.

Group V, claim(s) 1, 2, 6, 9-11 (all partially), drawn to as in group I, but component (b) is a morpholine and piperidine compound that acts on the sterol biosynthesis pathway.

Group VI, claim(s) 1, 2, 6-11 (all partially), drawn to as in group I, but component (b) is a phenylamide fungicide.

Group VII, claim(s) 1, 2, 6-11 (all partially), drawn to as in group I, but component (b) is a pyrimidinone fungicide.

Group VIII, claim(s) 1, 2, 6-11 (all partially), drawn to as in group I, but component (b) is a phthalimide.

Group IX, claim(s) 1, 2, 6-11 (all partially), drawn to as in group I, but component (b) is fosetyl-aluminum.

Group X, claim(s) 12, 13 (all complete), drawn to a compound of formula 1a of claim 12, and N-oxides and agriculturally suitable salts thereof.

Group XI, claim(s) 14, 15 (all complete), drawn to a compound of formula 1b of claim 14, and N-oxides and agriculturally suitable salts thereof.

Group XII, claim(s) 16 (complete), drawn to a compound of formula 1c of claim 16, and N-oxides and agriculturally suitable salts thereof.

The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the special technical feature of the Group I invention is an alkylenebis (dithiocarbamate) fungicide which is not present in Group II. The special technical feature of the Group II invention is a

compound acting at the bc₁ complex of the fungal mitochondrial respiratory electron transfer site, which is not present in Group I.

The inventions listed as Groups I and III do not relate to a single general inventive concept under PCT rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the special technical feature of the Group I invention is an alkylenebis (dithiocarbamate) fungicide which is not present in Group III. The special technical feature of the Group III invention is cymoxanil, which is not present in Group I.

The inventions listed as Groups I and IV do not relate to a single general inventive concept under PCT rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the special technical feature of the Group I invention is an alkylenebis (dithiocarbamate) fungicide which is not present in Group IV. The special technical feature of the Group IV invention is a compound acting at the demethylase enzyme of the sterol biosynthesis pathway, which is not present in Group I.

The inventions listed as Groups I and V do not relate to a single general inventive concept under PCT rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the special technical feature of the Group I invention is an alkylenebis (dithiocarbamate) fungicide which is not present in Group V. The special technical feature of the Group V invention is a morpholine and piperidine compound that acts on the sterol biosynthesis pathway, which is not present in Group I.

The inventions listed as Groups I and VI do not relate to a single general inventive concept under PCT rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the special technical feature of the Group I invention is an alkylenebis (dithiocarbamate) fungicide which is not present in Group VI. The special technical feature of the Group VI invention is a phenylamide fungicide, which is not present in Group I.

The inventions listed as Groups I and VII do not relate to a single general inventive concept under PCT rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the special technical feature of the Group I invention is an alkylenebis (dithiocarbamate) fungicide which is not present in Group VII. The special technical feature of the Group VII invention is pyrimidinone fungicide, which is not present in Group I.

The inventions listed as Groups I and VIII do not relate to a single general inventive concept under PCT rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the special technical feature of the Group I invention is an alkylenebis (dithiocarbamate) fungicide which is not present in Group VIII. The special technical feature of the Group VIII invention is a phthalimide, which is not present in Group I.

The inventions listed as Groups I and IX do not relate to a single general inventive concept under PCT rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the special technical feature of the Group I invention is an alkylenebis (dithiocarbamate) fungicide

Art Unit: 1609

which is not present in Group IX. The special technical feature of the Group IX invention is fosetyl-aluminum, which is not present in Group I.

The inventions listed as Groups I and X do not relate to a single general inventive concept under PCT rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the special technical feature of the Group I invention is an alkylenebis (dithiocarbamate) fungicide which is not present in Group X. The special technical feature of the Group X invention is a compound of formula 1a of claim 12, and N-oxides and agriculturally suitable salts thereof, which is not present in Group I.

The inventions listed as Groups I and XI do not relate to a single general inventive concept under PCT rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the special technical feature of the Group I invention is an alkylenebis (dithiocarbamate) fungicide which is not present in Group XI. The special technical feature of the Group XI invention is a compound of formula 1b of claim 14, and N-oxides and agriculturally suitable salts thereof, which is not present in Group I.

The inventions listed as Groups I and XII do not relate to a single general inventive concept under PCT rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the special technical feature of the Group I invention is an alkylenebis (dithiocarbamate) fungicide which is not present in Group XII. The special technical feature of the Group XII

Art Unit: 1609

invention is a compound of formula 1c of claim 16, and N-oxides and agriculturally suitable salts thereof, which is not present in Group I.

Due to the reasons listed above while comparing the special technical features of Group I with the remaining groups, each of the groups has special technical features not present in the remaining groups.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

Art Unit: 1609

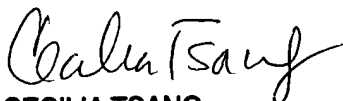
remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aradhana Sasan whose telephone number is (571) 272-9022. The examiner can normally be reached Monday to Thursday from 6:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang, can be reached at 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CECILIA TSANG
SUPERVISORY PATENT EXAMINER